Filed 2/20/09 Johnson v. Cal. Dept. of Rehabilitation Appeals Bd. CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CYNTHIA G. JOHNSON, Plaintiff and Appellant, v. CALIFORNIA DEPARTMENT OF REHABILITATION APPEALS BOARD, Defendant and Respondent.	B202810 (Los Angeles County Super. Ct. No. BS 102471)

APPEAL from a judgment of the Superior Court of Los Angeles County, David P. Yaffe, Judge. Affirmed.

Cynthia G. Johnson, in pro. per., for Plaintiff and Appellant.

Edmund G. Brown, Jr., Attorney General, Douglass M. Press, Assistant Attorney General, Leslie P. McElroy and Gala E. Dunn, Deputy Attorneys General, for Defendant and Respondent.

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Appellant Cynthia G. Johnson, acting in propria persona, appeals from the trial court's denial of her petition for writ of administrative mandate seeking to set aside an order of respondent Department of Rehabilitation Appeals Board (Board) directing the Department of Rehabilitation (Department) not to resume sponsorship of appellant's rehabilitative training program at California State University, Dominguez Hills (CSU) absent an agreed upon and signed "Individualized Plan of Employment" (IPE).[1] The trial court independently reviewed the administrative record and found the weight of the evidence supported the Board's decision. We affirm.

FACTS AND PROCEDURAL HISTORY

1. General Background

Appellant received vocational rehabilitation services from November 1999 to the spring of 2004 on the basis of a claimed disability due to morbid obesity, an arthritic knee, carpal tunnel syndrome and high blood pressure.[2]

In November 1999, the Department created an individual rehabilitation program for appellant to be trained to become a "computer security specialist."[3] Both the Department and appellant approved and signed the plan. The expected completion date of appellant's training was June 2001. The Department provided appellant with courses at the University of California, Los Angeles (UCLA) extension and related training at Los Angeles City College, together with transportation and supplies needed for those courses.

Later, appellant began taking Internet classes at CSU as well as UCLA extension. Appellant then changed her vocational goal to multimedia instructor and enrolled in a

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[1] An "Individualized Written Rehabilitation Program" (IWRP), now IPE, is a written plan of action and a statement of understanding regarding the rights and responsibilities of the client and the Department. It is developed jointly by the client and the counselor. (See Cal. Code Regs., tit. 9, §§ 7018, 7130, 7131.)

[2] During this time the Department provided appellant more than $100,000 in services, including tuition, computer software and equipment.

[3] Appellant's vocational rehabilitation services application indicated she sought assistance to become a "new media specialist."

master's program at CSU. Appellant's enrollment at CSU was to facilitate areas of employment other than a vocational goal of new media specialist.

In April 2002, the Department became aware that appellant was attending CSU. The Department informed appellant a revised IPE would be needed to reflect a change in her vocational goal prior to the Department's sponsorship of her training at CSU. The Department developed a revised IPE for appellant to include training at CSU for a master's degree with a vocational goal of multimedia instructor.

2. Prior Proceedings and Final Order

In January 2003 and February 2003, appellant filed requests for a fair hearing regarding several issues, including whether the Department properly discontinued sponsorship of multimedia classes for her at UCLA and whether the Department properly denied appellant's request for reimbursement of expenses for tuition, fees, books and other school related expenses she had incurred at CSU.[4]

On February 11, 2004, the Board issued an administrative decision (February 2004 decision), ordering the Department to revise appellant's IPE to a vocational goal of "multimedia specialist" and to resume funding appellant's multimedia training at UCLA extension.[5]

According to the order at issue on appeal, appellant brought a petition for writ of mandate in a prior proceeding filed in the superior court challenging some of the provisions

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[4] Additional issues were whether the Department acted in conformance with appropriate regulations by reducing appellant's transportation payment, discontinuing appellant's monthly stipend and denying appellant's request for equipment needed to complete her multimedia training program.

[5] The Board also directed the Department (1) not to reimburse appellant for past expenses incurred at CSU (approximately $6,500) for tuition fees, books and other school related expenses, (2) to reinstate appellant's transportation payment consistent with appropriate regulation, retroactive to the date of reduction, (3) to determine, together with appellant, her need for maintenance payments and to provide for same only if it determined they are necessary and consistent with applicable regulations, and (4) to provide equipment deemed necessary for successful completion of appellant's vocational objective.

of the Board's February 2004 decision. The superior court denied appellant's petition in December 2005, and the Board's February 2004 decision thus became final and binding on the parties.

3. Present Proceeding

A. Department's Efforts to Comply with February 2004 Decision

While continuing to sponsor appellant at CSU pending her administrative appeal of the Board's February 2004 decision, the Department prepared several revised IPE's and made 13 attempts between October 2003 and July 2004 to obtain appellant's agreement to an IPE.[6] Appellant would not agree to sign any of the revised IPE's. After the 13th attempt to reach an agreement on the IPE failed, the Department determined that it could no longer support appellant at CSU without a signed, agreed-to IPE as required under applicable regulations. The Department therefore discontinued sponsorship of appellant's training program at CSU, including tuition, fees, books and supplies, as of spring 2004.

B. Appellant's Request for Fair Hearing

Appellant immediately sought a fair hearing regarding the Department's action. In July 2005, the Board commenced an administrative hearing regarding appellant's claim. The parties stipulated that the issue before the Board was whether the Department acted in accordance with California Code of Regulations, title 9, and other applicable law, in discontinuing sponsorship of appellant's training program at CSU.

C. Board's October 2005 Decision

In October 2005, the Board issued a decision (October 2005 decision) finding the Department acted in accordance with the applicable regulations and law when it discontinued sponsorship of appellant's training program, including tuition and fees, books and supplies, at CSU. The Board directed the Department not to resume sponsorship of appellant's training program at CSU absent an agreed upon IPE signed by appellant and approved by the Department.

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6 At least one of the Department's proposed IPE's included an employment goal of multimedia specialist/education instructor and training at CSU as well as UCLA extension.

D. Appellant's Petition for Writ of Mandate

In April 2006, appellant filed the present petition in the superior court challenging the Board's October 2005 decision. Appellant requested that the court exercise its authority to issue a writ of mandate ordering the Board to replace its October 2005 decision with an order directing the Department, among other things, to resume sponsorship of appellant's training program at CSU, including loans, tuition, fees, books, supplies, rehabilitation engineering and other resources, retroactive to termination, and restitution of all benefits and expenses incurred by appellant during that period.

i. Trial Court's Findings and Order

The court ruled that the Department made reasonable attempts to accommodate appellant's legitimate needs for vocational rehabilitation services, and denied her petition for writ of mandate.

The trial court found appellant to be "a formidable expert at endlessly prolonging her dispute with the Department," indicating she had "produce[d] hundreds of pages of written argument, accuse[d] the Board of repeated acts of mistake and misconduct, and [was] never willing to sign an IPE that [was] offered to her by the Department." The court stated that appellant had "repeatedly file[d] pleadings that presen[ted] evidence without any citation to show that such evidence is contained in the administrative record, and she repeatedly attempt[ed] to present evidence [to] the court that is not in the administrative record."

The court stated that it had directed appellant to file a new pleading to replace all prior briefs because she had filed multiple opening briefs in an attempt to have the trial court consider matters outside the administrative record. The court had expressly ordered appellant to identify in her brief "each IPE that had been created by either party and tendered to the other for signature after February 11, 2004, and to specify where that IPE can be found in the administrative record." The court stated that appellant had refused to comply with its order and instead filed a supplemental brief in June 2007 identifying six IPE's "two of which were tendered before February 11, 2004, and three of which are not contained in the administrative record." The court found the only IPE contained in the administrative record designated by appellant was an IPE dated June 1, 2004, which the

Department had prepared and which appellant had refused to sign. Although appellant raised a number of criticisms of that IPE in her supplemental brief, the court found none of her assertions to be supported by reference to the administrative record and all merely reflected appellant's "subjective evaluations" that the court had no ability to evaluate.

The trial court independently examined the administrative record and found the weight of the evidence supported the Board's administrative decision. The court found appellant had failed to meet her burden of convincing the court the Board's October 2005 decision was either wrong or not supported by the weight of the evidence.[7]

ii. Motion for New Trial and Appeal

Appellant filed a motion "to vacate order for summary judgment" (capitalization omitted) and for new trial citing numerous grounds. The court denied the motion. This timely appeal followed.

CONTENTIONS

Appellant makes numerous contentions of error by the trial court, which essentially boil down to claims that (1) the trial court committed judicial errors causing the merits of the case not to be heard; (2) the trial court was biased against her; and (3) appellant was denied procedural due process. We disagree.

STANDARD OF REVIEW

"'In the trial court, the standard of review depends on the nature of the right affected by the administrative decision. (See Code Civ. Proc., § 1094.5, subd. (c).) In the appellate court, the appropriate standard of review is substantial evidence, regardless of the nature of the right involved. Thus, even in those cases where the trial court was required to review an administrative decision under the independent judgment standard of review, the standard of review on appeal of the trial court's determination is the substantial evidence test.

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[7] The trial court found appellant was using her entitlement to vocational rehabilitative services as a means to continue to obtain rehabilitation benefits for "as long as possible," stating, "She does not have a genuine desire to work to support herself. She believes that so long as she refuses to agree to the terms of an IPE, the Department must continue to provide her with benefits which she may use as she pleases."

[Citation.]" (*Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 87, fn. omitted.) Once the appellate court determines whether substantial evidence supports the trial court's factual findings, the appellate court applies a de novo standard to determine whether the hearing was fair under the facts so found. (*Ibid.*)

DISCUSSION

1. The Trial Court's Decision Is Supported by Substantial Evidence

The trial court independently reviewed the administrative record and found the weight of the evidence produced during the administrative hearing supported the Board's decision that the Department acted in accord with applicable regulations and law when it discontinued sponsorship of appellant's training program at CSU. We have reviewed the entire record, including the augmented record on appeal containing the administrative proceedings, and are satisfied that substantial evidence supports the trial court's order.[8]

The record discloses that appellant's IPE (formerly IWRP) was developed and approved with the vocational goal of appellant becoming a computer security specialist. This IPE expired in June 2001. As of June 2001, appellant had no valid IPE in place. Title 34 of the Code of Federal Regulations part 361.45 requires an agreed-upon and signed IPE containing mandatory components prior to sponsorship of training.[9] The IPE must be "agreed to and signed by the eligible individual, or, as appropriate, the individual's

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[8] We granted appellant's request to submit supplemental documents and additional briefing after oral argument. We have reviewed the additional documents and briefing and have taken them into consideration in reaching our decision.

[9] Among other things, mandatory components of the IPE include a description of the specific employment outcome chosen by the eligible individual consistent with his or her "unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice"; a description of the specific vocational rehabilitation services including, as appropriate, the anticipated duration of such service; timelines for achieving the employment outcome and initiation of services; a description of the entity or entities chosen by the individual that will provide the vocational rehabilitation services and methods used to procure those services; and a description of the criteria to be used to evaluate progress toward achievement of the employment outcome. (Cal. Code Regs., tit. 9, § 7131.)

representative" and "approved and signed by a qualified vocational rehabilitation counselor . . . ." (34 C.F.R. § 361.45(d)(3)(i), (ii).)[10]

To the extent the trial court viewed conflicting evidence regarding the matter at issue, we view the evidence in the light most favorable to the trial court's decision. The trial court found on the conflicting evidence that appellant was using her entitlement to vocational rehabilitative services as a means to continue to obtain rehabilitation benefits for as long as possible. The court found appellant had no "genuine desire to work to support herself" and that she believed that "so long as she refuses to agree to the terms of an IPE, the Department must continue to provide her with benefits which she may use as she pleases." Substantial evidence in the record supports these determinations.

There was overwhelming evidence from which the trial court could find the Department made reasonable attempts to accommodate appellant's legitimate needs for vocational rehabilitation services. The evidence also indicates appellant used her entitlement to services as a means for receiving rehabilitation benefits for as long as possible. The Department presented several proposed IPE's to appellant and made numerous attempts to obtain appellant's signature on an IPE conforming to the applicable regulations. Nevertheless, appellant repeatedly refused to cooperate in the Department's attempts to obtain a mutually agreeable revised IPE under her belief services could not be terminated so long as she did not agree to or sign a revised IPE. The court had ample evidence from which to infer the Department's discontinuance of appellant's training program at CSU was justified in the absence of a valid, signed IPE.

2. Appellant's Contentions Are Without Merit

Appellant refers to various "fundamental" judicial errors purportedly committed by the trial court. These include "caus[ing] the merits of the case to never actually be heard,"

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10 Section 7130 of title 9 of the California Code of Regulations also requires that the IPE be "[a]greed to and signed by the eligible individual or, as appropriate, the individual's representative" and "[a]pproved, signed, and dated by a Rehabilitation Counselor employed by the Department." (Cal. Code Regs., tit. 9, § 7130, subd. (a)(3)(A),(B).)

rendering a decision "contrary to AR [administrative record] evidence," rendering an "arbitrary and capricious decision" and rendering a decision "contraindicative of statutory law as well as the principles of justice and equity." She asserts the trial court committed "irregularities" during the trial, including failing to read any of her briefs or allowing a rebuttal to the Department's brief before the hearing on the merits.

Appellant fails to support her claims by a proper statement of facts with appropriate citations to the record and reasoned argument with citations to authority. Because a trial court's decision is presumed to be correct, error is not presumed. (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 822; *Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 631-632.) It is the appellant's burden on appeal to affirmatively demonstrate error on the record before the court. (*Winograd v. American Broadcasting Co.*, *supra*, at pp. 631-632.)

In any event, the record discloses that the trial court reviewed the case on the merits. The voluminous record on appeal indicates both parties submitted extensive exhibits, including the original certified administrative record, to the trial court and the court reviewed the submitted materials prior to issuing its ruling. Based on our review of the record, we reject appellant's claim that the trial court failed to read any of her briefs or that it failed to allow her a rebuttal to the Department's brief before the hearing on the merits. The Department submitted its opposition to appellant's petition on April 17, 2007, allowing appellant sufficient opportunity to submit any appropriate reply to the Department's opposition prior to the initial hearing on May 2, 2007. (See Code Civ. Proc., § 1005, subds. (b), (c).) The trial court subsequently denied appellant's request to admit additional exhibits, but the record discloses it did so only after reviewing and considering such supplemental materials. The trial court has broad discretion over the admission or exclusion of evidence. (*People v. Richardson* (2008) 43 Cal.4th 959, 1001.) Absent a showing to the contrary, moreover, we presume the trial court performed its duty to review all relevant and properly submitted documents prior to ruling. (Evid. Code, § 664; *People v. Allegheny Casualty Co.* (2007) 41 Cal.4th 704, 715.) As discussed above, the trial court's findings are supported by substantial evidence found in the administrative record and are not contrary to

such evidence. Prior to entering judgment, the trial court issued a lengthy and well reasoned minute order explaining the factual and legal basis for its decision. The expressed grounds for ruling belie any claim the court rendered an "arbitrary and capricious" decision. The decision is also consistent with the law, as we have explained, and therefore does not violate principles of justice and equity.

Finally, appellant asserts in conclusory fashion that she was prejudiced by the claimed errors of the trial court, but she fails to reasonably demonstrate that error occurred or that the outcome would have been different in the absence of error. An appellate court is not obliged to examine an appellant's undeveloped claims or to formulate arguments for the appellant. (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 105.) Moreover, a reviewing court will not reverse an order or judgment unless after examination of the entire cause, including the evidence, it appears that error resulting in a miscarriage of justice has occurred. (Cal. Const., art. 6, § 13; *Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1069.) It is the appellant's burden to show prejudicial error. (Code Civ. Proc., § 475; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Department of Personnel Administration v. California Correctional Peace Officers Assn.* (2007) 152 Cal.App.4th 1193, 1201.) Absent a showing of a reasonable probability a result more favorable to appellant would have been reached absent such error, we will not reverse an order or judgment. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

3. Judicial Bias

Appellant complains the trial judge, the Honorable David P. Yaffe, demonstrated a "bias toward government entities" and "disdain and denigration of pro se[] litigants." We find this contention to be without merit.

A party is entitled to trial before a fair and impartial judge. (*In re Richard W.* (1979) 91 Cal.App.3d 960, 967.) However, an objection to the impartiality of the judge must first be raised by objection in the trial court and cannot be raised for the first time on appeal. (*People v. Scott* (1997) 15 Cal.4th 1188, 1207.)

Moreover, appellant presents no facts or legal support to substantiate her assertions of "established and disturbing patterns of bias and predilection" (boldface omitted) of the

trial judge. Appellant complains that the trial judge was not "user-friendly" toward persons with disabilities or pro se litigants but fails to cite facts demonstrating any bias or prejudice on the part of the trial judge. Appellant cites newspaper articles, other inadmissible hearsay and matters outside the record that fail to support her contention even if such materials properly could be considered. Her arguments amount to a contention that because the trial judge ruled against her a fortiori he must have been biased in favor of the Department and prejudiced against appellant. To justify a new trial or reversal on appeal, an affirmative showing of prejudice is required. (*In re Richard W.*, *supra*, 91 Cal.App.3d at p. 968; *People v. Beaumaster* (1971) 17 Cal.App.3d 996, 1009.)

DISPOSITION

The judgment is affirmed. The parties shall bear their own costs on appeal.

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FLIER, J.

We concur:

RUBIN, Acting P. J.

BIGELOW, J.